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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/832,396 04/10/01 CAHILL

J 1968.1-1C

024243  
CHARMASSON & BUCHACA  
1545 HOTEL CIRCLE SOUTH  
SUITE 150  
SAN DIEGO CA 92108-3412

PM82/0621

EXAMINER

BRITTAIN, J

ART UNIT

PAPER NUMBER

3626

DATE MAILED:

06/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/832,396	Applicant(s) CAHILL, JAMES	
	Examiner James R. Brittain	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 14 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3-13, 15 and 16 is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |  |  |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                 | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 20) <input type="checkbox"/> Other: ____                                     |

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## DETAILED ACTION

### *Priority*

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

It is noted that the patented parent also had a parent, SN08/536,400. It would appear that this could be referred to in the priority statement.

Further, the statement that the instant case is a continuation of SN09/046,112 is objected to because it's clear that additional subject matter has been added beyond the teachings of the parent. It would appear that the relationship is that of a continuation-in-part. This is clearly stated by applicant in the transmittal sheets accompanying this application which have the box adjacent C-I-P checked.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1, 2, 14, 17-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 6, 7, 9, 10 and 12 of U.S. Patent No. 6,212,741. Although the conflicting claims are not identical, they are not patentably distinct from each other because the extractably loaded dispenser is obvious from claims 1, 2, 4, 9, 10 and 12 in which the tether is claimed as extractably loaded and an example such as a spindle is claimed. In regard to claim 14, the use of a badge to convey information would have been obvious in view of claim 7 of the patent.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 19 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Reckamp (US 5,411,156).

Reckamp (figures 1-3) teaches using a tether structure as shown in figure 1B in which a first end 102 is releasably fastened to the item, in this case cotton. A second end in the finger grip portion 16 is then attached by adhesive to the bottom surface 26 of the container in the form of the seal being the top of the container.

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Reckamp (figures 1-3) teaches using a tether structure as shown in figure 1B in which a first end 102 is releasably fastened to the item, in this case cotton. A second end in the finger grip portion 16 is then attached by adhesive to the bottom surface 26 of the container in the form of the seal being the top of the container. This rejection is being made in case applicant changes his priority statement.

Claim 19 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pomeroy et al. (US 3,968,873).

Pomeroy et al. (figures 1-5) teaches tether structure 21 with a first end formed from the plate 16 releasably attached to an item 18, 20 and the second end secured to the container.

#### ***Allowable Subject Matter***

Claims 3-13, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents of Anderson (US 5,316,249) and Thomas (US 4,782,967) teach pertinent tether structure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on 703-308-3179. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain  
Primary Examiner  
Art Unit 3626

jrb  
June 18, 2001